



4310-05-P

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

**[PA-167-FOR; Docket ID: OSM-2017-0009
S1D1S SS08011000 SX064A000 19S180110;
S2D2S SS08011000 SX064A000 19XS501520]**

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of a proposed amendment to the Pennsylvania program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through this proposed amendment, Pennsylvania seeks to revise its regulatory

program to include statutory provisions that permit reclamation bond coverage for no cost to surface mining operators who remine and then reclaim the area with biofuel crops and establish a Land Reclamation Financial Guarantee program that provides for land reclamation financial guarantees as a form of reclamation bond. Implementing regulations are also included. This document gives the times and locations that the Pennsylvania program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., Eastern Standard Time (e.s.t.), [Insert date 30 days after the date of publication in the FEDERAL REGISTER]. If requested, we will hold a public hearing on the amendment on [Insert date 25 days after date of publication in the FEDERAL REGISTER]. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by SATS No. PA-167-FOR; Docket ID: OSM-2017-0009, by any of the following methods:

- Mail/Hand Delivery: Mr. Ben Owens, Chief, Pittsburgh Field Division, Office of

Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA,
15220

- Fax: (412) 937-2177
- Federal eRulemaking Portal: The amendment has been assigned the Docket ID OSM-2017-0009. If you would like to submit comments go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE’s Pittsburgh Field Division or the full text of the program amendment is available for you to read at www.regulations.gov.

Mr. Ben Owens, Chief, Pittsburgh Field Division
Office of Surface Mining Reclamation and Enforcement
3 Parkway Center

Pittsburgh, PA 15220

Telephone: (412) 937-2827

Email: bowens@osmre.gov

In addition, you may review a copy of the amendment during regular business hours at the following location:

Thomas Callaghan, P. G., Director

Bureau of Mining and Reclamation

Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 8461

Harrisburg, PA 17105-8461

Telephone: (717) 787-5015

Email: tcallaghan@pa.gov

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Chief, Pittsburgh

Field Division, Office of Surface Mining Reclamation and Enforcement, 3 Parkway

Center, Pittsburgh, PA 15220, Telephone: (412) 937-2827, Email: bowens@osmre.gov

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find additional background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, Federal Register, (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated July 26, 2017 (Administrative Record No. PA 900.00), Pennsylvania sent us an amendment to its program under SMCRA (30 U.S.C. 1201 et seq.). The amendment to the Pennsylvania program includes two statutory changes to the Pennsylvania Surface Mining Conservation and Reclamation Act (PA SMCRA, 52 P.S. §§ 1396.1—1396.31); Act 95 of 2012 relating to biofuels incentives for remining sites; and Act 157 of 2012, relating to financial guarantees and funding for reclamation obligations. Implementing regulations at 25 Pennsylvania Code (Pa Code) Chapter 86, Surface and Underground Coal Mining, which were adopted in 2015, are also included.

Statutory Changes: Mining Permit and Bioenergy Crop Bonding, Act 95 of 2012: An amendment to the PA SMCRA, House bill (H.B.) 608, entitled Mining Permit and Bioenergy Crop Bonding, was enacted on July 5, 2012, Pub. L. 918, No. 95 and became effective September 3, 2012. The new statutory provisions encourage and promote the use of bioenergy crops as part of the reclamation plan that addresses revegetation of the lands affected by surface mining activities. The provisions also provide sum-certain financial guarantees for this purpose.

Statutory Changes: Mining Permit, Reclamation Plan, and Bond and Land Reclamation Financial Guarantees, Act 157 of 2012: An amendment to the PA SMCRA, H.B. 1813, entitled Mining Permit, Reclamation Plan, and Bond and Land Reclamation Financial

Guarantees (LRFG), was enacted on October 24, 2012, Pub. L. 1276, No. 157 and became effective December 23, 2012. The new statutory provisions incorporate a land reclamation financial guarantee as a form of bond or collateral that may be available to the operator for the reclamation of land affected by surface mining operations. The financial guarantee is provided by the Commonwealth to qualified operators to satisfy the required bond obligation. The LRFG program provides for the assessment and collection of premiums from operators for such guarantees in an amount sufficient to assure the financial stability of the financial guarantee program and to cover the Commonwealth's cost to administer the program. This program replaces the Commonwealth's Conversion Assistance Program (CAP) of 2001. The new statutory provisions address site and operator eligibility, the establishment of an account for this purpose, the transfer of funds from the CAP program to the LRFG account, the authorizations to transfer funds from the LRFG account into the Reclaiming Financial Assurance Fund and the Reclamation Fee Operation and Maintenance account, interest earned on the account, conditions for dissolution of the program, and management of the account.

Regulatory Changes: 25 Pa Code: The Pennsylvania Environmental Quality Board adopted changes to mining regulations at 25 Pennsylvania Code on April 21, 2015, and the changes became effective on August 22, 2015. These changes include the addition of sections 86.162b and 86.162c, which implement the statutory changes resulting from Act 95 of 2012, Mining Permit and Bioenergy Crop Bonding, and Act 157 of 2012, Mining

Permit, Reclamation Plan, and Bond and Land Reclamation Financial Guarantees. In addition, chapters 86-90 were amended to correct citations to the PA SMCRA to account for the addition of section 19.2 of the SMCRA, which was added by Act 157, to correct other citation errors, and to address other minor changes.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at www.regulations.gov.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal

laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on [Insert date 15 days after date of publication in the FEDERAL REGISTER]. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an

opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866 - Regulatory Planning and Review

Pursuant to Office of Management and Budget (OMB) Guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the Federal Register indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 11, 2018.

Thomas D. Shope, Regional Director

Appalachian Region

Editorial note: This document was received for publication by the Office of the Federal Register on March 29, 2019.

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